

10 December 2024

PAD-FoE_2024_24

Council of Europe

**Preliminary Legislative and Policy Proposals
for implementation of Council of Europe and EU standards
to counter SLAPPs in Ukraine**

Division for Co-operation on Freedom of Expression

The role and responsibility of the Council of Europe in protecting freedom of expression has been underlined in the "Reykjavik Principles for Democracy", the [Reykjavík Declaration – United around our values.](#)

The document was prepared by the Council of Europe Project “[Safeguarding Freedom of Expression and Freedom of Media in Ukraine](#)” (SFEM-UA), implemented by the [Division for Co-operation on Freedom of Expression](#) in the framework of [the Council of Europe Action Plan for Ukraine “Resilience, Recovery and Reconstruction” 2023-2026.](#)

Introduction

On 5 April 2024, the Council of Europe adopted Recommendation CM/Rec(2024)2 of the Committee of Ministers to Member States on countering the use of strategic Lawsuits Against Public Participation (SLAPPs). Similarly, the European Union Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation') and Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation'). Both the Recommendations and the Directive have entered into force, and it is expected that Council of Europe and EU Member States will already begin implementing them, while EU Member States are expected to bring into force the laws, regulations, and administrative provisions necessary to comply with the Directive by 7 May 2026.

On 9 December 2024, the Coalition against SLAPPs in Europe (CASE) and The Daphne Caruana Galizia Foundation published the [*2024 SLAPPs Report: Mapping Trends and Cases*](#). According to this Report:

- There were 166 SLAPP cases in 2023 alone
- 1,049 cases in total since 2010
- The majority of cases relate to corruption or environmental issues
- Businesses and politicians are the biggest legal bullies
- Journalists, in their independent capacity, are worst hit
- SLAPPs were recorded for the first time in several European countries

The Report also says that *"Fortunately, the Council of Europe issued a recommendation in April 2024 which sets out a more robust framework for deterring and remedying SLAPPs. While the Recommendation is non-binding, it reflects the jurisprudence of the ECtHR that public interest discourse necessitates distinct protections and affirms that early dismissal mechanisms should be available in all abusive court proceedings against public participation."*

Ukrainian lawmakers expressed the willingness to align the Ukrainian legislation with the European standards. A round table on countering SLAPPs was organised by the Council of Europe project in September 2024, with participation of a diverse group of stakeholders, including lawyers, human rights defenders, journalists, members of Parliament, representatives from the Prosecutor General Office, and civil society organisations. The participants discussed the implementation of the anti-SLAPP standards at the national level.

Based on the results of these discussions, this document provides a brief overview of legal options available for implementation and transposition of anti-SLAPP standards in Ukraine. These options include:

- 1) Introducing stand-alone Anti-SLAPP laws as *lex specialis*, to counter SLAPPs and guarantee protection of persons participating in public debates on issues of public interest;
- 2) Amending the current legislation of Ukraine, particularly, the Civil, Civil Procedural, Commercial Procedural Codes of Ukraine to ensure that the procedural safeguards and remedies foreseen in the Council of Europe and EU Anti-SLAPP instruments are introduced at the national level;
- 3) Combining both of the above methods.

While the introduction of relevant amendments to the Ukrainian legislation may require additional research and discussions, some arguments for the proposed implementation procedures are presented below.

A new Law to counter SLAPPs.

A new anti-SLAPPs law and safeguards of protection of persons participating in public debates on issues of public interest could be developed. This law should contain the anti-SLAPP guarantees provided for in the Council of Europe Recommendation and the EU Directive. In particular, it should include a definition of SLAPPs; grounds for early dismissal of such claims; guarantees of protection of a person affected by SLAPP; grounds for compensation for losses, material and moral damage caused by SLAPP. It should establish limits on the amount of losses, compensation for material and moral damage that may be recovered by the court in favour of the plaintiff; provide for the right of the court to refuse to compensate for moral (non-pecuniary) damage if the plaintiff has not applied out of court for refutation of disputed information, protection of his/her honour, dignity and business reputation in another way or for settlement of the dispute in general.

At the same time, the inclusion of procedural safeguards against SLAPP in the new law may be challenging, as the procedure for conducting court proceedings in Ukraine is traditionally regulated by procedural codes. Although the latter do not exclude the application of other laws (part 1 of Article 3 of the Commercial Procedural Code of Ukraine, part 1 of Article 3 of the Civil Procedural Code of Ukraine), the list of such laws is exhaustive in commercial proceedings, and therefore amendments to these codes will be required to ensure effective application of procedural guarantees against SLAPP. In addition, amendments to the above procedural codes may be required to ensure the integrity of all court procedures.

Amendments to the current legislation of Ukraine.

The relevant provisions of the Directive and the Recommendations could be implemented in Ukrainian legislation by amending existing laws, in particular, the Civil, Civil Procedural, Commercial Procedural Codes of Ukraine, the Law of Ukraine “On Court Fees” and by adopting a law on civil partnership.

In particular, procedural guarantees against SLAPP should be set out in a separate section of the Commercial and Civil Procedure Codes of Ukraine, supplemented, in particular, by legal provisions that would provide for: 1) the obligation of the court to suspend the proceedings until the motion for early dismissal of the lawsuit against public participation is resolved; 2) the possibility of securing court costs if there are signs that the claim is directed against public participation (has characteristics of SLAPP); 3) the consequences of the court recognising the claim as a strategic lawsuit against public participation in the form of recovery from the plaintiff of all costs related to the case, including all costs of representing the defendant in court incurred by the defendant, etc. (see recommendations in Section 5 of this research). In addition, it would be advisable to make targeted amendments to the Law of Ukraine “On Court Fees” and adopt a law that would regulate civil partnership relations in Ukraine.

This approach is realistic, but complicated due to the need to amend numerous legal acts, and particularly the codes of Ukraine. And while amendments to the Civil Code of Ukraine can be avoided by adopting a separate law on anti-SLAPP, it may be problematic to provide procedural guarantees against SLAPP without amending the relevant procedural codes for the reasons mentioned above. On the other hand, enshrining procedural guarantees against SLAPP in the procedural codes will increase the level of protection against these abuses. Therefore, it is advisable to do so despite all the difficulties.

Drafting a new anti-SLAPP law and amending the current Ukrainian legislation.

Given the above arguments, it could be recommended to:

- 1) adopt a new law to counter SLAPPs, which sets out all the material grounds and guarantees for protecting persons from this type of abuse of rights; and
- 2) amend the Civil and Commercial Procedural Codes of Ukraine, the Law of Ukraine “On Court Fees” and others (if necessary) to provide procedural guarantees against SLAPP. It is also necessary to adopt a law on civil partnership.

In addition, it is advisable to raise awareness of anti-SLAPPs issues through the Council of Europe training programmes for judges, prosecutors, lawyers and other legal professionals, as well as for journalists and civil society; introduce statistical reporting on SLAPP cases, which should be made public on a regular basis; create and maintain a public register of SLAPP cases.

Appendix

Summary of preliminary recommendations to counter SLAPPs

Issue	Recommendation	Which law needs to be changed?
SLAPP indicators	<p>Develop and adopt a new law on combating SLAPPs and guarantees of protection of persons participating in public debates on issues of public interest. It should set out the relevant terminology and include indicators of SLAPP and provide for appropriate guarantees of protection against such claims (this law should contain the relevant substantive law).</p> <p>Adopt a national strategy and a step-by-step action plan that identifies long-term and short-term measures aimed at addressing SLAPP issues.</p>	
Early dismissal of lawsuits against public participation	<p>The substantive grounds for early dismissal of SLAPP claims are set out in the new anti-SLAPP law mentioned above.</p> <p>The procedural grounds for early dismissal of SLAPP claims should be provided for in a separate section of the Civil and Commercial Procedure Codes of Ukraine. In particular, the grounds and procedure for recognising a claim as manifestly unfounded as a SLAPP, as well as the legal consequences of such a decision and the possibility of appealing against it should be provided for.</p> <p>It is advisable to establish that the consequences of filing identical, similar, numerous or coordinated strategic claims against public participation, including if there are signs of manipulation of the automated distribution of cases among judges, are grounds for early dismissal of claims.</p> <p>It should also be provided that the burden of proof that the claim is justified rests with the plaintiff filing the claim. In addition, it should provide that the denial of a motion to dismiss a SLAPP claim does not deprive the defendant of the right to demand that the claim be recognised as a SLAPP at any stage of the proceedings, etc.</p>	<p>Civil Procedure Code of Ukraine;</p> <p>Commercial Procedure Code of Ukraine</p>
Temporary suspension of proceedings	<p>Articles 251, 253 of the CPCU and 227, 229 of the CPCoU should be supplemented with a new ground that obliges the court to suspend the proceedings until the issue of early dismissal of the claim against public participation is resolved and to determine the period for which the proceedings are suspended</p>	<p>Articles 251, 253 of the Civil Procedure Code of Ukraine;</p> <p>227, 229 Commercial Procedure Code of Ukraine</p>
Securing court costs	<p>Supplement paragraph two of part 4 of Article 135 of the CPCU and paragraph two of part 4 of Article 125 of the CPCoU with such grounds for securing court costs as “the presence of characteristics of a strategic lawsuit against public participation (SLAPP)”</p>	<p>Para 2 of part 4 of Article 135 of the Civil Procedure</p>

		Code of Ukraine; Para 2 of part 4 of Article 125 of the Commercial Procedure Code of Ukraine
Compensation for damages	To be discussed	
Reimbursement of court costs	Part 9 of Article 141 of the CPCU and part 9 of Article 129 of the CPCoU should be supplemented with a sentence stating that if the court determines that the claim is a strategic claim against public participation, the court may recover from the plaintiff all costs associated with the case, including all costs of representing the defendant in court incurred by the defendant.	Part 9 of Article 141 of the Civil Procedure Code of Ukraine; Part 9 of Article 129 of the Commercial Procedure Code of Ukraine
Death of the defendant or loss of legal capacity	<p>Adopt a law regulating civil partnership relations in Ukraine that guarantees persons in civil partnerships access to the same legal remedies and support as the original defendant (in particular, in SLAPP cases), including the right to be a guardian of their partner who lost legal capacity.</p> <p>The new law on combating SLAPP and guarantees of protection of persons participating in public debates on issues of public interest should establish the right of family members and partners to carry out procedural succession in this category of cases, as well as to intervene as legal representatives of the defendant in case of loss of legal capacity. These persons should be guaranteed the same rights as the original defendants, including the right to use free secondary legal aid and others.</p>	
Recognition of the status of a person affected by SLAPP and compensation for damages	<p>The new anti-SLAPP law should include provisions on the grounds and procedure for recognising the status of a person affected by a SLAPP and for compensation for losses, material and moral damages caused to them in this regard. It should be noted that such status may be granted to family members and partners of the defendant in the SLAPP case who died, as well as in case of loss of legal capacity.</p> <p>In order to develop amendments to Ukrainian legislation to protect victims of SLAPP, it is advisable to take into account the provisions of Sections VIII “Protection of Whistleblowers” and XI “Liability for Corruption or Corruption-Related Offences and Removal of Their Consequences” of the Law of Ukraine “On Prevention of Corruption”, as well as parts 5 and 6 of Article 17 of the Law of Ukraine “On State Support of the Media, Guarantees of Professional Activity and Social Protection of Journalists”.</p>	
Limitation of damages for plaintiffs	The new law on anti-SLAPP and guarantees of protection of persons participating in public debates on issues of public interest sets limits on the	

	amount of damages, compensation for material and moral damage that may be recovered by the court in favour of the plaintiff.	
Costs of paying the court fee by the defendant	<p>Article 8 of the Law of Ukraine “On Court Fees” should be supplemented with a clause that would impose an obligation on the court to provide access to court to the defendant - a natural and/or legal person in a SLAPP case, by granting, where necessary, deferral, instalment payment of court fees or exemption from payment or reduction of the amount of court fees.</p> <p>In addition, it is advisable to return to subparagraph 5 of paragraph 1 of part 2 of the Law of Ukraine “On Court Fees” the previously existing differentiated scale of court fees for defamation claims, in particular, by providing for a higher amount of court fees for SLAPP claims for a significant amount, for example, in excess of UAH 300 thousand. - 10% of the amount of the claim, in the amount of UAH 100 to 300 thousand - 5% of the amount of the claim, etc. A similar provision should be provided for in subparagraph 2 of paragraph 1 of Part 2 of the Law of Ukraine “On Court Fees” for commercial cases.</p>	<p>Part 1 of Article 8 of the Law of Ukraine “On Court Fees”</p> <p>Part 2 of Article 4 of the Law of Ukraine “On Court Fees”</p>
Procedure for reviewing and appealing decisions in SLAPP cases	It should be stipulated that cases with SLAPP features are not subject to summary proceedings, and that decisions made in such cases may be appealed in cassation.	Civil Procedure Code of Ukraine; Commercial Procedure Code of Ukraine
Facilitating the use of extrajudicial remedies	The new law on anti-SLAPP and guarantees of protection of persons participating in public debates on issues of public interest should include a legal provision that would give the court the right to refuse to compensate for moral (non-pecuniary) damage if the plaintiff has not applied for an extrajudicial refutation of disputed information, for protection of their honour, dignity and business reputation in another way or for settlement of the dispute in general.	
Support for targets of SLAPP claims and persons affected by them	<p>The new law on anti-SLAPP and guarantees of protection of persons participating in public debates on issues of public interest should provide for measures of financial, legal, psychological and practical support for persons subject to SLAPP claims and/or those who suffered from them.</p> <p>Provide civil society organisations that protect freedom of speech in Ukraine with the right to participate in judicial proceedings that have SLAPP characteristics on the side of the defendant, including intervening as third parties who do not make independent claims regarding the subject matter of the dispute.</p> <p>Extend the guarantees provided for by the Law of Ukraine “On Ensuring the Security of Persons Participating in Criminal Proceedings” to persons participating in court debates on issues of public interest by supplementing Article 2 of this Law with relevant provisions.</p> <p>In addition, defendants in SLAPP cases should be granted the right to use free secondary legal aid, which requires amendments to Article 14 of the Law of Ukraine “On Free Legal Aid”.</p>	<p>Law of Ukraine “On Ensuring Security of Persons Participating in Criminal Proceedings”</p> <p>The Law of Ukraine “On Free Legal Aid”</p>

Cross-border SLAPPs	<p>Article 468 of the CPCU should be supplemented with a provision that would allow to refuse to satisfy a petition for permission to enforce a foreign court decision made in a SLAPP case.</p> <p>In addition, a natural or legal person against whom SLAPP was successfully filed with the courts or other authorities of a third country should be entitled to apply to Ukrainian courts or other authorities at the place of their permanent residence for compensation for damages and expenses incurred in connection with the consideration of such SLAPP claim, regardless of the place of residence of the plaintiff participating in the proceedings in the third country.</p>	<p>Civil Procedure Code of Ukraine Article 75 of the Law of Ukraine “On Private International Law”, Civil Procedure Code of Ukraine</p>
Deterrence measures	<p>Directly provide in the CPCU and the CPCoU for the imposition of a fine for filing a SLAPP claim and establish an adequate amount of such a fine that would deter plaintiffs from filing such claims.</p> <p>Allow courts in SLAPP cases to impose an obligation on plaintiffs to disseminate information about court decisions (e.g., to publish court decisions in full or in part).</p>	<p>Civil Procedure Code of Ukraine; Commercial Procedure Code of Ukraine;</p> <p>These codes and the new anti-SLAPPs law and guarantees of protection of persons participating in public debates on issues of public interest.</p>